

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:	)	
	)	OAH No. 12-0683-ATP
C N. L	)	Former OHA Case No.
_____	)	DPA Case No.

**DECISION**

**I. Introduction**

The original issue in this case was whether C N. L is entitled to an extension of the 60 month lifetime limit for receipt of Alaska Temporary Assistance Program<sup>1</sup> (ATAP) benefits on the basis that she has an adult relative living in her home who has a medical disability and who requires such a high level of care that caring for the relative interferes with Ms. L's ability to work.<sup>2</sup> Ms. L, however, did not appear for a scheduled hearing, and did not respond to a subsequent order providing her with an opportunity to show good cause for her failure to appear for her scheduled hearing. As a result, the issue which must now be determined is whether this case should be dismissed because Ms. L did not show good cause for her failure to appear for her scheduled hearing. This decision concludes that Ms. L did not show good cause for her failure to appear for her scheduled hearing. Accordingly, Ms. L's case is dismissed.

**II. Facts**

Ms. L is 30 years old.<sup>3</sup> Her household consists of one adult and three children.<sup>4</sup> She first began receiving ATAP benefits in March 2007.<sup>5</sup> During the period that she received ATAP

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<sup>1</sup> The Alaska Temporary Assistance Program (ATAP) is a program created by the Alaska Statutes to implement the federal program for Temporary Aid to Needy Families, or TANF. *See* A.S.47.05.010(1); A.S.47.27.005 – A.S.47.27.990; 42 U.S.C. § 601 *et. seq.* ATAP's governing regulations are found in the Alaska Administrative Code at 7 AAC 45.149 – 7 AAC 45.990. ATAP is designed to help financially eligible families with minor children. AS 47.27.010.

<sup>2</sup> A family may not normally receive ATAP benefits from the state (or parallel TANF programs in other states) for a total period of more than 60 months. AS 47.27.015(a)(1). However, the ATAP regulations provide an exception to the 60 month lifetime limit when domestic violence, a physical or mental inability to work, or the need to care for a disabled child or relative, interfere with a recipient's ability to work. *See* AS 47.27.015(a)(1)(A)-(C); 7 AAC 45.610(d) – (f). The ATAP regulations also allow an exception to the 60 month lifetime limit for family hardship. AS 47.27.015(a)(1)(D); 7 AAC 45.610(g).

<sup>3</sup> Ex. 1.

<sup>4</sup> Ex. 1.

<sup>5</sup> Ex. 1.

benefits, the Division sent her periodic notices, as required by its regulations, reminding her how many months of benefits she had used and how many months of benefits she had left.<sup>6</sup>

On March 1, 2012 the Division notified Ms. L that her ATAP benefits would end after March 31, 2012 because she had reached the end of the 60 month lifetime limit for receipt of ATAP benefits.<sup>7</sup> At some time during the next week Ms. L applied for an extension, and on March 7, 2012 the Division granted her a one month extension of benefits.<sup>8</sup> On April 13, 2012 the Division mailed a written notice to Ms. L advising her that, unless an additional extension of benefits was granted, her ATAP benefits would end on April 30, 2012.<sup>9</sup>

On May 2, 2012 the Division held a meeting (known as an "extension staffing") to determine whether to grant Ms. L another extension of ATAP benefits.<sup>10</sup> Ms. L asserted that she needed another extension because her father was going to be released from jail into her care the next day, he was disabled, and she would be unable to both work and take care of him.<sup>11</sup> Ms. L did not, however, provide the Division with any documentation or other verification to support these claims.<sup>12</sup> In particular, Ms. L did not submit a DPA Health Status Report Form to confirm that she was the only person able to care for her father, and that he required her care on a 24/7 basis.<sup>13</sup> Accordingly, the Division denied Ms. L's request for an additional extension of ATAP benefits.<sup>14</sup>

Ms. L requested a Fair Hearing on May 14, 2012 and her hearing was scheduled for May 30, 2012.<sup>15</sup> On May 29, 2012 Ms. L requested that her hearing be postponed. Ms. L's hearing was postponed to June 27, 2012.

On June 19, 2012 Ms. L requested a second hearing postponement. She advised that her health has not been good; that she was not currently feeling well; and that she had been in the hospital "more than once in the past few weeks." She also advised that she was seeking legal representation.

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<sup>6</sup> Gagne hearing testimony.

<sup>7</sup> Ex. 2.

<sup>8</sup> Exs. 3.0, 3.1.

<sup>9</sup> Ex. 5.0.

<sup>10</sup> Exs. 7.3, 7.4, 8.0 - 8.5.

<sup>11</sup> Ex. 8.1.

<sup>12</sup> Ex. 8.1.

<sup>13</sup> Ex. 9.2.

<sup>14</sup> Exs. 8.0 - 8.5, 9.0, 10.

<sup>15</sup> Ex. 9.2.

The Division opposed Ms. L's postponement request. The Division pointed out that Ms. L's hearing had already been postponed once, at her request, by about four weeks. The Division also stated that Ms. L had requested, and was receiving, continued ATAP benefits pending this Office's issuance of its decision following hearing. Ms. L's postponement request was denied by the undersigned's order dated June 22, 2012.

Ms. L's hearing began on June 27, 2012. The hearing was recorded. Ms. L attended the hearing in person, represented herself, and testified on her own behalf.<sup>16</sup> Ms. L's mother, N C. L, also attended the hearing and testified on her daughter's behalf. Terri Gagne, a Public Assistance Analyst employed by the Division, participated in the hearing by phone and represented and testified on behalf of the Division. Kathleen McDonough, Work Services Specialist for Division contractor Nine Star Education and Employment Services, also testified by telephone on behalf of the Division. All testimony and exhibits offered by the parties were admitted into evidence.

The hearing could not be completed within the one hour allotted.<sup>17</sup> Accordingly, the hearing was continued to July 31, 2012. On July 31, 2012, approximately 80 minutes before hearing time, Ms. L contacted this Office by phone. She indicated that her son had required emergency eye treatment and that she was at the eye doctor's office, with her son, waiting to be seen. She indicated that she would not be able to participate in the hearing because of this. She asked that her hearing be rescheduled.<sup>18</sup>

At the scheduled hearing time this Office held an on-record teleconference with the DPA representative. The Division opposed rescheduling the hearing. The next day (August 1, 2012) this Office issued an order providing Ms. L with an opportunity to submit evidence demonstrating good cause for her failure to participate in the hearing of July 31, 2012. Ms. L was advised that she could do this in writing, and/or by participating in an on-record teleconference. Finally, Ms. L was advised that if she did not provide evidence establishing good cause by August 9, 2012 her case might be dismissed. Ms. L did not respond to the August 1, 2012 order.

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<sup>16</sup> Ms. L appeared to be well at the time of the hearing.

<sup>17</sup> Ms. L had arrived late for her hearing and had brought with her a number of documents which she requested be copied and admitted into the hearing record.

<sup>18</sup> These statements were made by phone to one of this Office's staff members.

### III. Discussion

The procedural rules governing hearings of this type provide that a case may be dismissed if the requesting party (in this case, Ms. L) fails to appear, without good cause, for the scheduled hearing.<sup>19</sup> Ms. L was not available for her scheduled hearing. She was then provided with an opportunity to demonstrate good cause for her unavailability. She did not take advantage of that opportunity and has not demonstrated good cause for her failure to attend or participate in her hearing.

Judicial decisions have defined "good cause" in the context of motions to excuse a litigant from default under Alaska Rules of Civil Procedure 55 and 60. In determining whether "good cause" exists to set aside a default, factors to be considered include (1) whether the defaulting party has established a meritorious claim or defense, (2) prejudice to the non-defaulting party, (3) the culpability of the defaulting party's conduct, (4) the length of the period of default, (5) the size of any potential award to the non-defaulting party, and (6) alternative sanctions against the defaulting party.<sup>20</sup>

In this case, Ms. L has not provided evidence that she has an adult relative living in her home who has a medical disability and who requires such a high level of care that caring for the relative interferes with Ms. L's ability to work. She has therefore not demonstrated that she has a meritorious claim for another extension of ATAP benefits.<sup>21</sup>

In addition, the fact that Ms. L is receiving continued benefits pending the ultimate resolution of this case means that the Division can be prejudiced by granting postponement after postponement. During the pendency of this case Ms. L has received three months of continued benefits to which she has proven no entitlement. Although the Division has the legal right to attempt to recover overpaid benefits from recipients, as a practical matter it can be virtually impossible to do

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<sup>19</sup> See 7 AAC 49.100(4); 2 AAC 64.320(a).

<sup>20</sup> *Cook v. Rowland*, 49 P.3d 262, 264-266 (Alaska 2002).

<sup>21</sup> Showing a meritorious claim or defense demands more than a perfunctory statement that a meritorious claim or defense exists. *Cook v. Rowland*, 49 P.3d 264-266. The burden of proving the existence of a meritorious claim or defense rests on the party seeking to avoid default. *Siewing v. Pearson Company*, 736 P.2d 120, 122 (Montana 1987).

so. This in turn adversely impacts the Division's financial ability to pay benefits to other applicants who satisfy the eligibility criteria.<sup>22</sup>

In summary, Ms. L was given an opportunity to demonstrate good cause for her unavailability at hearing. She did not take advantage of that opportunity and has not demonstrated good cause for her failure to attend or participate in her hearing. This case should therefore be dismissed.

#### **IV. Conclusion**

This case is dismissed because Ms. L failed, without good cause, to appear for her scheduled hearing. The Division's decision denying Ms. L's request for an extension of ATAP benefits for the month of May 2012 remains in effect. This decision does not, however, affect Ms. L's right to receive a subsequent extension of ATAP benefits should she apply and qualify for such an extension in the future.

DATED this 14<sup>th</sup> day of August, 2012.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

### **Adoption**

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 31<sup>st</sup> day of August, 2012.

By: *Signed* \_\_\_\_\_  
Name: Ree Sailors  
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]

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<sup>22</sup> The remaining factors identified in *Cook v. Rowland, supra* do not apply given the administrative context of this case.